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The Remarkable Case of Golden Ten: An Interplay of Justice and Science

SYTZE F. KINGMA

INTRODUCTION

THE DECADE OF THE 1980s was the heyday of the Golden Ten game in the Netherlands. At that time there were more than 100 casinos in the country that exploited Golden Ten; many were small casinos with no more than one or two playing tables but a number were larger gaming places that could measure up to the three state casinos in Zandvoort (1976), Valkenburg (1977) and Scheveningen (1979). Mostly the Golden Ten casinos were tolerated but they were often controversial as well. Not only were some of the casinos suspect of fraud and associated with criminality, but they also had an unclear legal status. The uncertainty lay therein if Golden Ten was to be considered a game of skill, as the operators claimed it was, or rather a gaming game, as, among others, the Dutch Casino Counsel marked it.

In the early nineties all uncertainty was ended, and consequently Golden Ten bloomed. In 1991 the Supreme Court finally decided that Golden Ten is indeed a game of chance and that exploitation is therefore illegal according to the Dutch Gaming Act. Since this decision the Golden Ten casinos have been leading a marginal existence. On the other hand, the Dutch state casinos, known as Holland Casino since 1989, has expanded and extended considerably in the late eighties and early nineties. Its number went up from 3 to 10 between 1985 and 1995 and profits rose from 142 to 665 million guilders. This way, the rise of the legal casino

industry seems to present a classic example of a market of "vices" that enter the business illegally, are then tolerated and eventually legalized, a developmental logic that, generally speaking, seems to revolve around alcohol, drugs, and prostitution as well.¹

A GAMING COMPLEX

With this article I would like to argue that this logic should rather be the result than the starting point of the analysis. Indeed, at the start there was no set assumption that the Golden Ten casinos were illegal or criminal. Furthermore, it is not self-evident that the government itself exploits the casino market. It would have been possible to legalize just some private Golden Ten casinos. It would not be the first time as the government did apply different, if not opposing, strategies to other gaming markets. In 1986 the legislature legalized the up-to-then condoned market of slot machines, while the commercial exploitation of bingo has always been and still is illegal. The dynamics of legislation of gaming markets are hard to fathom without a closer examination of the actors that render a market legal or illegal. In this case, criminality and illegality are considered social constructions, where at times bona fide and legal is merely the outcome of negotiations and dispute between diverging parties linking specific definitions of what they feel is admis-

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¹ See, e.g., JOHN C. BURNHAM, *BAD HABITS: DRINKING, SMOKING, TAKING DRUGS, GAMING, SEXUAL MISBEHAVIOR, AND SWEARING IN AMERICAN HISTORY* (New York University Press 1993).

sible to their power relations.² In this light, it does not per se interest me if a gaming market is legal or not. I would like to focus on the processes of market development and market control, processes that run different courses and have different outcomes for various gaming markets. Subsequently, I will not beforehand regard certain games as legal or illegal, as it is precisely this distinction that needs explanation. The Golden Ten issue is also essential to understand the construction of the legal casino industry. The game will cease to be merely an anecdote or footnote in the history of the Dutch casino market as it is often made to be. In short, this article will be about the dynamics of (il)legalization and the contribution of the Golden Ten game to the Dutch gaming industry.

The dynamics of (il)legalization of Golden Ten take shape in the context of a specific regime of regulation for gaming. In *The Gaming Complex*,³ from which much of this article is derived, I have described this regime in terms of the “alibi model” as the basis of the Dutch Gaming Act of 1964. Under this regime gaming is considered to be morally controversial, the exploitation of gaming is restricted as private pursuit of profit is countered by linking gaming practices to “the public interest” and “good causes,” and gaming can become legal to sidestep illegal markets. This regime indeed advances legal gaming but at the same time illegality is just as much a condition as a consequence of the (restricted) market. The alibi model can be read as a transitional stage between regulation based on prohibitions on the one hand and regulation based on exploitation risks on the other. The end of the Golden Ten era marks in my view the transition to a new regulation regime for gaming, which I refer to as the “risk model.”⁴ This new regime (legally) accepts the exploitation of gaming, it also acknowledges the economical importance of the gaming industry, and regulates gaming primarily to contain “external effects” of addiction and criminality. This way, illegal markets are primarily counteracted by the public prosecutor and represent less reason to create legal alternatives.

To stay true to the idea of a transitional stage I will describe Golden Ten in terms of “liminality” as it was introduced by the anthropol-

ogist Victor Turner in *The Ritual Process*.⁵ He defined “liminal entities” as “neither here nor there; they are betwixt and between the positions assigned and arrayed by law, custom, convention and ceremonial.”⁶ The notion of liminality allows us to investigate a situation that is neither legal nor illegal but is indicative of some kind of double identity somewhere between the two. A liminal zone offers socially accepted opportunities to explore boundaries and experiment with new behavioral and organizational forms. Golden Ten was leaving criminality behind and anticipating a legal statutory status.

GOLDEN TEN

The Golden Ten exploitation strategy is based on the evasion of the Gaming Act by appealing to the skills the game requires. The strategy is probably as old as the notion of chance in gaming law. After all, illegality is foremost the logical complement of legal standards. Every legal criterion elicits its specific charades. It is not just the issue of chance but also, for example, the criteria of public accessibility and (the prohibition of) commercial exploitation, that can be dodged by calling on respectively “privacy” and “voluntariness” and the “good cause.” The evasive strategy of skill, for that matter, can not only be found in the field of roulette but it can also come with e.g., slot machines, lotteries, and bingo.

The roulette game of skill, also referred to as pseudo roulette or quasi roulette, appears in different forms during the course of time, featuring names as Delphi, Saturne, Roulex, and

² See P. BERGER AND T. LUCKMANN, *THE SOCIAL CONSTRUCTION OF REALITY* (Doubleday Anchor 1966); J.D. DOUGLAS, ED., *DEVIANCE & RESPECTABILITY: THE SOCIAL CONSTRUCTION OF MORAL MEANINGS* (Basic Books 1970).

³ SYTZE KINGMA, *HET GOKCOMPLEX. VERZELFSTANDIGING VAN VERMAAK* [THE GAMING COMPLEX: AUTONOMIZATION OF ENTERTAINMENT] (Rozenberg Publishers 2002).

⁴ See also SYTZE KINGMA, *GAMBLING AND THE RISK SOCIETY: THE LIBERALIZATION AND LEGITIMATION CRISIS OF GAMBLING IN THE NETHERLANDS* (International Gambling Studies, forthcoming 2003).

⁵ VICTOR W. TURNER, *THE RITUAL PROCESS: STRUCTURE AND ANTI-STRUCTURE* (1969).

⁶ *Id.* at 95.

Derby. The Golden Ten game, or 24 Observation roulette, was designed by the West German Jürgen Blattgerste and first introduced in 1979 in a hotel in Antwerp. At least, this is how the journalist Leon Zoeteman⁷ reconstructs the origin of the game.

The question of the origin of these games, however, is far less interesting than that of the circumstances that give ground to the evasion strategy of skill and the consequences thereof for the organization of gaming. As early as at the beginning of the twentieth century the *Jeu de poule*, for example, was reason enough for a small but important addition to the law on lotteries, making it easier to keep off games of skill. The criterion of “no influence” by participants on the determination of chance no longer sufficed for the 1905 law on lotteries, the legislature sharpened the notion to “no paramount influence.”

The roulette game of skill besets the legal casino industry not only in space but also surrounds it in time. During the depression of the 1930s A.A. Zijlstra, the tourist director of the seaside resort Scheveningen (near The Hague) introduced a roulette game of skill in the Kurhaus hotel, an initiative that was soon followed on various other locations in the Netherlands.⁸ However, this type of roulette was soon forbidden by law and Zijlstra later made sure to seize every possible opportunity to promote legal casinos in the Netherlands. Some decades later, in the seventies, he was closely involved with the planning of the first legal Dutch casinos.

When in the sixties several forms of the roulette games of skill appeared once more with justice taking action against them, the High Court released a specification of the statutory regulations of chance, in the decree on the game of Saturne.⁹ To determine whether the participants can influence the outcome of the game “the actual results of the large majority of the players of the game are decisive.” Thus, the concept of chance depends on the subjective experience and personal behavior of the players—according to the judge they refrain from calculating their chances as they are “mentally lazy” or find the game “more amusing” this way—and not on the objective structure of the game, built in by the organizer. This was actually where the seed was sown for the

Golden Ten issues in the 1980s. The public prosecutor has faced a very difficult task trying to prove that the participants have no influence on the outcome of the game. Until 1991, when the High Court accepted a scientific report by the two cognitive psychologists W. Wagenaar and G. Keren¹⁰ as proof of the chance factor of Golden Ten, the juridical controversy around the argumentation was Golden Ten’s *raison d’être*.

Although juridical and mathematical discussions about the issue of chance do not immediately strike us as sociological subjects, these arguments are pre-eminently a social phenomenon and highly relevant to the structure of the gaming complex. That is, if we choose not to treat these controversies as mathematical and juridical issues and, as the anthropologist Bruno Latour does with techno-science in *Science in Action*,¹¹ concentrate on the social strategies behind the arguments and the social consequences that follow.

The controversy over the chance element of Golden Ten has far-reaching consequences. In a judicial translation in 1983 of a complicated mathematical analysis of a number of seemingly futile details of the game, a Golden Ten operator was acquitted. Consequently, Golden Ten casinos shot up like mushrooms all over the country. Throughout the eighties this greatly affected the entire casino industry in the Netherlands, as it also touched on the state casinos. However, the rise of Golden Ten in the Netherlands cannot be explained by the jurisprudence and the liberal attitude of justice alone. The roulette game of skill did not have its real breakthrough before the eighties, due to various additional circumstances. For one

⁷ L. ZOETEMAN, IN DE BAN VAN HET GOKMONSTER [Under the spell of the gambling monster] (Omega Boek 1988).

⁸ See A.A. ZIJLSTRA, VAAR WEL SCHEVENINGEN. BONTE HERINNERINGEN AAN EEN BADPLAATS. [Farewell Scheveningen. Colourful memories of a watering place] (1974).

⁹ See Dutch Jurisprudence, 1966, 364.

¹⁰ W. A. WAGENAAR AND G. KEREN, HET ONDERSCHIED TUSSEN KANS-EN BEHENDIGHEIDSSPELEN. RAPPORT IN OPDRACHT VAN DE RAAD VOOR DE CASINOSPELEN [The distinction between games of chance and games of skill] (1985).

¹¹ BRUNO LATOUR, SCIENCE IN ACTION: HOW TO FOLLOW SCIENTISTS AND ENGINEERS THROUGH SOCIETY (Harvard University Press 1987).

thing, in 1970 there was the foreboding of the legalization of casinos upon which the advocates of legal casinos seized to explore the strategy of skill as it was tried out in the sixties. Also, as police and justice spent only little time and effort on them during these years, the operators of illegal casinos could ease up on the regulations of the Gaming Act. This changed in the 1980s when justice introduced a stricter enforcement of the Gaming Act. This intensification became most tangible in the case against the year-long condoned casinos of Maurits de Vries in the Amsterdam red light district and Ger Van Driel Vis in the Rotterdam harbor area.¹² As long as they can “take it easy,” criminals will not go “the hard way.”

In 1981 Gerard Wiggers, an associate of Blattgerste, introduced Golden Ten in the Netherlands, first in Enschede, then in Berg en Dal. At the start of 1983 the public prosecutor took action against the Enschede casino and launched a test case against Golden Ten. The public prosecutor lost this showdown all the way to the High Court.¹³ The judge ruled that there was no conclusive evidence that Golden Ten was a game of chance. In his defense Wiggers referred to a scientific report that was commissioned by another associate of Blattgerste.¹⁴ This report stated that “the chance of success for players is higher with Golden Ten than with an absolute game of chance.” During the appeal the public prosecutor called in Prof. W. Wagenaar. However, Wagenaar at that time declared that he could not pronounce on the chance factor of Golden Ten because of the vagueness of the legal criterion.

SKILL

Of national importance for the history of Golden Ten is the picturesque village Berg en Dal with a touristy reputation, near the city of Nijmegen in the east of the Netherlands. It was here that the police demonstrated for the first time that the players of Golden Ten in fact play the game as they would a game of chance. This affair succinctly, and rather absurdly, exposed the narrow link between the production of knowledge and the implementation of policies. However, as mentioned before, the attempts by

the police and justice department to determine the chance factor of the game are sociologically relevant because it is this factor that stipulates whether casinos are or are not legal. Thus, in order to grasp its social dynamics we need to learn not only who are involved in the game and its operation but also how the game is played, what technique is used.

In July 1983 the respectable yet destitute Hotel Hamer in Berg en Dal provided the facility to play Golden Ten.¹⁵ The owner let out the large room of the hotel to the charity organization Casino Club Berg en Dal, founded by J. Blattgerste, R. Schneider, and G. Wiggers; the last mentioned being the chairman. Here they exploited three Golden Ten kettles with seven playing tables. The founding of the casino club was thoroughly prepared. The operators took their advice from a solicitor and conferred with the mayor and police department of the municipality. After consulting the public prosecutor of the provincial capital (Arnhem) the municipality assumed a neutral position and the police was not to act against the casino. Two years earlier, in July 1981, the same operators introduced Golden Ten in the Netherlands in the Derby Club casino in Enschede, where again Wiggers was chairman. The public prosecutor, as mentioned, prosecuted Wiggers but in May 1983 he was cleared by the court. This acquittal provoked Wiggers to exploit Golden Ten once more, this time in Berg en Dal.

The acquittal and the opening of Casino Club Berg en Dal lead to the establishment of various casinos like the one in Berg en Dal all over the Netherlands. In and around Nijmegen several operators tried their luck. As a response to

¹² See B. MIDDELBURG, *DE MAFIA IN AMSTERDAM* [The mafia in Amsterdam] (De Arbeiderspers 1988); R. VAN DER ROER, *DE MILJOENENGOK VAN GER VAN D.V. IN GEORGANISEERDE MISDAAD EN STRAFRECHTELIJK POLITIEBELEID*. [The millions gamble of Ger van D.V.] 49–80 (C.J.C.F. Fijnaut, ed., Van den Brink (1989).

¹³ See Dutch Jurisprudence, 1985, 738.

¹⁴ See F.P.G.M. LA FORS AND G.B. DERKSEN, “GOLDEN TEN”, *EEN KANSSPEL OF EEN BEHENDIGHEIDSSPEL? RAPPORT GESCHREVEN IN OPDRACHT VAN DE HEER R. SCHNEIDER, OPERATOR VAN HET “GOLDEN TEN” SPEL* [“Golden Ten”, a game of chance or skill?] (TNO-IWIS 1981).

¹⁵ See REPORT OF AN OFFENCE REGARDING THE GOLDEN TEN CASINO AT BERG EN DAL, NIJMEGEN POLICE DISTRICT, GROESBEEK (1984).

this fast expansion the public prosecutor of the county court district decided to prosecute the Golden Ten game. This decision was put in a letter to the operator and hotel owner of Casino Club Berg en Dal in late September and they closed the club. However, when the court of Arnhem confirmed the earlier acquittal of Wiggers in a higher court the operators saw this as a reinforcement of the legal position of the Golden Ten game. At the end of November they introduced a new Casino Club in Hotel Hamer. The former operators, however, stepped back and the "new" casino club was appointed a different chairman as the public prosecutor had already indicated not to let it rest easily. The new club also suggested that the psychological expert Prof. W. Wagenaar investigate the skill factor of Golden Ten; in a suit the operators requested permission to keep the club open for such a study. Nonetheless, in early December the public prosecutor made it clear that the casino would have to close down. Right up to the verdict on December 20th, wherein the judge dismissed the operators' demand, the casino stayed in business. On that day the public prosecutor searched Hotel Hamer and took possession of the attributes of the game.

During the criminal investigation that preceded the closure, the police, on its own initiative, conducted an investigation into the skill involved with Golden Ten. In the summons the sergeant major of the state police described the game accurately.¹⁶ The element that most differs from traditional French roulette is that with Golden Ten the numeric circle is fixed and does not turn. The ball rolls in a continuous circle on the wide rim of an aluminium dish around the numeric wheel. In the process of slowing down, the ball approaches the circle only reaching it after numerous rotations. While rotating and moving towards the centre of the dish the ball passes two rings that are marked on the dish. The first ring the ball crosses shortly after it is thrown, is the "observation ring," the second ring near the numeric circle in the heart of the dish is the "limit ring." From the exact spot where the ball crosses the "observation ring" it is supposedly possible to deduce where the ball will end up on the numeric circle. When the ball passes the "limit ring" it is so close to the numeric circle that the players may no longer

place any bets. The orbit of the ball is not perfectly round, it is somewhat elliptic. Next to this important technical difference, another big difference is that traditional roulette is played with 36 instead of 24 numbers—many roulette games of skill are therefore referred to as "24-roulette." This increases the bank's advantage. The advantage of the Golden Ten bank is greater also because the game has two nils instead of one, which is also true for American roulette. The wages with Golden Ten, on the other hand, can be rather low; often the minimal wager is f2,50, sometimes only f1,-. Hotel Hamer started out with a minimal wager of f5,- which eventually dropped to f2,50.

Do the players actually use any skills? That is what the sergeant major of the state police wanted to know. From his own observations he did not get the impression that they do. Many players seem to prefer the numbers that are within reach, and the players at the far end of the table can hardly see the observation ring on the disc. The club rules stated that, in order to encourage the use of skill, every player has to observe at least five rounds of the game before they may join in. These observation rounds are to be respected with every change of table. However, the police found there was hardly any supervision on the observation of this particular rule. Furthermore, the *bouleur* warns the players to use their skills by calling "Watch please!" just before the ball crosses the observation ring. There is no betting before these words are said.

As part of a more structured police investigation the police officers observed the game transactions for a total time of four days, with some intermissions. A *croupier* who was there at the time remembers the following, in 1993:

We were open to the public as usual and the officers stood around the table to observe whether the players were observing the game. This went on for about two weeks. We would play very officially while they were there. After they had left

¹⁶ See NIMEGEN POLICE DISTRICT, REPORT OF AN OFFENCE CONTAINING THE FINDINGS AND THE DESCRIPTION OF THE GAME OF GOLDEN TEN, BERG EN DAL (May 15, 1984).

we would say “guys, back to your normal bets now.” Most players really didn’t look at the ball. It would be like “my daughter was born on the fifth so I will bet number five.” This was actually not permitted. We were supposed to address these players, saying “no ma’am, you have to look first.” She would then say “I’m really not looking, you know that as well as I do,” while the police were right there. The officers would just laugh with us.¹⁷

Each round the officers put down whether the players “look” at the dish and the ball or not, whether they “deliberately” choose the numbers they bet on and how often they “win,” on pre-printed forms. The officers monitored the games of 245 players, with no more than three going on simultaneously. The police concluded that the players must have been “gaming” in 89.3 percent of the 3487 games that were observed.

In the line of these observations the police summoned several members of the Board and staff of the new Casino Club Berg en Dal. One of the statements revealed that the club had around 1600 “members” and 30 staff members. The chairwoman of the club and the manager, at the insistence of the police—who obviously wished to enhance the validity of their observations—declared that the monitoring officers did not in any way influence the members’ usual playing behavior. The police questioned Schneider as the letter of the game material. The total worth of the material inside the casino club was said to be around 100.000 Dutch guilders. One of the things he stated was that Blattgerste and his patent on Golden Ten in the Netherlands was not very strong; by introducing just minor changes anyone could exploit the game without a possible intervention from their side. The police examined the landlord Hamer, who let out the club’s location for 7500 Dutch guilders a month. Hamer declared that he did everything to avoid any “conflicts with the law.” Indeed the lease mentioned that the game must be legal.

The semi-scientific police investigation may have been dubious but that is not the point here. Important is that the judge accepted the argument and sentenced the chairman of the

new Casino Club Berg en Dal, a sentence which was later on upheld by the High Court. However, this did not put an end to Golden Ten. The public prosecutor prosecuted a few Golden Ten casinos but the judges only decided in the prosecutor’s favor if the chance factor of the game was made evident through an elaborate police investigation as was executed at Hotel Hamer. This heavy onus of proof, requiring a fresh observation investigation for every closure, was beyond many police forces and the public prosecutor; the police estimated that the investigation at the new Casino Club Berg en Dal took up around 1400 man-hours. The officers involved in the investigation were eventually frustrated over the meager result after such a great deal of effort. As a result of the little success up to the nineties, the public prosecutor in the district of Arnhem took the position that national regulations should be formulated before prosecuting Golden Ten once more. In 1984 the Attorney General decided to provisionally stop prosecuting Golden Ten in the whole of the Netherlands.

POLICY

As Golden Ten casinos can appeal to their legal status they can also manifest themselves as such. The casinos appear on eye-catching locations and advertise openly. The game is also referred to as “peoples roulette.” Publicity is aimed at a large local and regional public. Compared to the state casinos there is relatively low betting and high accessibility. There is no dress-code, the croupier does not expect a tip, manners are informal, and all is easy going. Staying at the Golden Ten casino is sweetened by free drinks and snacks, cab-money or a ‘katje’ (a small amount of money if you happen to lose all of your own), and at times spectacular extra bonuses and celebrity shows. Through their accessible local and regional nearness and by aiming for the big public, Golden Ten furthers the democratization and social legitimacy of casinos. In other words, Golden Ten lifts the casino out of the under-

¹⁷ Interview with croupier, (May 1993).

ground sphere of illegality but at the same time out of the elite and tourist minded scheme of state casinos.

Still the world of the Golden Ten casinos has been everything but uniform. Golden Ten has spread out over the entire range of casinos, from the private casino, to the illegal and criminal casino, and the large-scale, condoned luxury casinos. Also, the exploitation structure is somewhat obscure. There are adventurers and smart catering-entrepreneurs. However, after a while the exploitation of Golden Ten is ruled by only a few specialized entrepreneurs, who undoubtedly know each other, without there being any direct clues towards criminal or Mafia practices. The market is shaped like an oligopoly; somewhat like the description given by criminologist Frank Bovenkerk of the Dutch cannabis production in the nineties.¹⁸ They are insolent executives that own a network of sometimes over ten casinos in the Netherlands or even Germany, Belgium, or France. The operators keep a low profile. Because their legal status is doubtful they take "precautions" that border on illegal practices. Their casinos are run by figureheads and money runners, and at times they adapt the juridical construction and introduce a list of members to feign a private club.

There have been several incidents that do point to criminality. This varies from inadequate bookkeeping, moonlighting, staff thefts, and tax evasion, to intimidation and manipulation with roulette dishes, to several hold ups and the mysterious disappearance of Golden Ten magnate P.G. Hertel in 1986, who is assumed to be murdered.¹⁹ In 1987 *Playboy* magazine featured a report on the shady profession of Golden Ten croupier.²⁰ The weekly tabloid *Panorama* interviewed an addicted player and a Golden Ten croupier.²¹ They both spoke of strategies, which also came up during my own interviews, that enable croupiers to put players at a disadvantage: by manipulating the ball, the dish, and the playing table; or through so-called "set-ups" or "deals" between croupiers and players; and by using psychological tricks to keep the player in the game and the casino.

However, there are casinos in the realm of Golden Ten that have expressly detached themselves from any criminal activities. For the training institute for games and service, "OSS

BV," in particular, Blattgerste does seek to have a professional management and a proper legal status. For a short period in 1983 this "institute" exploited a Golden Ten casino in the Rotterdam Hilton—later on there would be a state casino. In 1986 OSS BV exploited five casinos, employed 200 people and is said to have paid over four million Dutch guilders in taxes a year. A number of the larger Golden Ten operators, including Blattgerste, initiated a national Golden Ten foundation, the NSGT, in 1986. This pressure group aspires a legal status and government regulation for the trade. Taking stock of aims and aspirations, this gaming corporation can be compared with the NSC (Dutch National Foundation for Casino Games, 1971) and the VAN—a gaming machine trade organization (also founded in 1971). Such organizations are essential in the strive for legalization, on the one hand they (can) keep close contact with the government and on the other hand they (can) promote self-regulation in the trade. Around 1986 there were about 140 Golden Ten casinos in the Netherlands, mostly small casinos with no more than two tables but also ten or so bigger ones that measured up to the state casinos, in size and set-up.²²

The acceptance of Golden Ten is not based on the Gaming Act but on the questionable upholding of the law on the one hand and the social and administrative recognition of the game on a local level on the other. These circum-

¹⁸ See FRANK BOVENKERK, *MISDAADPROFIELEN* [Crime profiles] (Meulenhof 2001).

¹⁹ For the murder of Hertel, see MIDDELBURG, *supra* note 12, at 22–23; ZOETEMAN, *supra* note 7, at 196. The Recherche Informatie Bulletin by the CRI of February 1988 (No. 1) reports that rigged roulette tables were discovered during raids in 1987 and that there were 49 raids on Golden Ten casinos in the years between 1984 and 1988, including 6 attempts. In 1988 the tax authorities and the Dutch Industrial Insurance Administration Office determined that 56 of the 91 investigated Golden Ten casinos committed fraud. See De Gelderlander, October 17, 1989; Cf. CASINOS COUNCIL, ANNUAL REPORT 22 (1989). In total the tax authorities attached more than 300 million Dutch guilders in after-tax.

²⁰ See PLAYBOY, January 1987.

²¹ See PANORAMA, No. 43, No. 47, 1987.

²² In 1985 the Casinos Council counted 137 Golden Ten clubs. CASINOS COUNCIL, *KANSSPELBELEID: NORMEREN EN TOLEREREN* [Gaming policy: normalization and tolerance] Appendix C (1988).

stances differ in different areas and change over time. Every district has its own prosecution policy and every municipality or even every casino has its own ideas on the acceptance of the game. The market is unstable. While in Berg en Dal, for instance, Golden Ten can go about almost unhindered as the administration feels they do not receive sufficient backing from the judiciary, the local government of the neighboring city Nijmegen is trying to discourage the exploitation of Golden Ten casinos by means of an entertainment permit (keeping in mind the candidature of this city for a state casino). At the same time Rosmalen, 40km west of Nijmegen, treats the presence of the Golden Ten casinos as an asset in the municipality. In 1986 in Rosmalen, or the "Las Vegas of the south" as it was known in the mid-eighties, the mayor even declared himself to support the legalization of bona fide Golden Ten casinos.

At first, the national government assumed a resigned position in anticipation of what was to come. In a prime reaction to the acquittal of the Golden Ten operator Wiggers, in 1984 the State Secretary of Economic Affairs, stated that it is "a misconception that the government will be tolerant with regard to quasi-roulettes."²³ But it was soon clear that prosecution would be accompanied by considerable juridical problems. In June 1986 the responsible members of government answered to the Lower House by stating that "to intensify the investigation and prosecution policy as requested by the Dutch casino corporation and the Casinos Council would weigh too heavily on 'personnel and financial means.'" The Procurators-General of the courts had by then already decided not to make Golden Ten high priority unless known criminals are involved.

In 1986 the public prosecutor seriously prosecuted Golden Ten in a number of districts, mostly in the metropolitan areas in the west of the Netherlands. To enhance the efficiency and effectiveness of the prosecution the police deploy trained "participant observers."²⁴ They observed around 300 hours of gaming behavior to appreciate the factor of chance with Golden Ten. The public prosecutor also drew the attention to the economic offenses Golden Ten exploitation entails with regard to taxes

and social benefits. Operators can be penalized for these offenses more harshly than by a ruling under the Gaming Act. One of the targets was the Leijdse Club in Amsterdam owned by OSS BV.²⁵ After each police raid the club just reopened. This repeated itself four times in a row. The staff was highly indignant at the perseverance of the public prosecutor and offered a petition to the mayor and aldermen of Amsterdam speaking of "capriciousness" and "arbitrariness."

Thus, Golden Ten was indeed prosecuted in several places and the public prosecutor by all means considered it to be a game of chance. Still, in many cases the public prosecutor resigned to the Golden Ten activities, often out of frustration over lost cases, the heavy burden of proof, and the running procedures. It was not until 1990 that justice tightened up the national prosecution of the game. Under the influence of the government and the Lower House, the Procurators-General decided to augment the priority in the fall of 1989.²⁶ Meantime, in the jurisprudence a mitigation of the burden of proof took shape. The court of Rotterdam felt that police observation was no longer strictly necessary. In reaction to this Golden Ten clubs closed down in several districts. Subsequently the court of law of The Hague took the same stand in October 1989 and February 1990. In these court cases the judge accepted the report by Wagenaar and Keren from 1985 as sufficient evidence that Golden Ten was indeed a game of chance. In this light the public prosecutor conducted an all-out offensive on the Golden Ten casinos in the southern provinces of the Netherlands.

The Dutch casino corporation and the Casinos Council during the eighties were most strong in their lobby for the suppression of Golden Ten. With the public prosecutor, with the Ministries of Justice and Economic affairs,

²³ STAATSCOURANT, October 3, 1984.

²⁴ See RECHERCHE ADVIES COMMISSIE (RAC), CRIMINAL INVESTIGATION DEPARTMENT, STOP! RAPPORT GOLDEN TEN. Z.P. [Stop! Report on Golden Ten] (1988).

²⁵ See ZOETEMAN, *supra* note 7, at 197-198.

²⁶ For the arguments for prosecution I call upon the closing speech of the public prosecutor against the playing club "De Keyzer" in Rosmalen, as articulated in the Den Bosch Court on November 8, 1990.

in politics, in annual reports, and in the media they continuously emphasized the dangers of illegality. They also protested a policy of tolerance with regard to quasi-roulettes and insisted strongly that Golden Ten be rigidly prosecuted. The Dutch casino corporation and the Casinos Council referred to it as "fraudulent competition."

In fact, the Casinos Council was actively involved in the actions against Golden Ten casinos. Journalists of the weekly tabloid *Elsevier* questioned this development.²⁷ The Casinos Council drew up inventories of Golden Ten casinos, had talks with the public prosecutor about the prosecution, and is said to have mislead prominent Golden Ten operators to get them to collaborate with a test case. Blattgerste feared: "This is not fair play, we cannot face up to this lobby." The Casinos Council later commissioned criminal law specialist T. Schalken to draw up a report²⁸ on all possible options to prevent and shut down illegal casinos. Eventually, the aforementioned report on chance and skill with Golden Ten by Wagenaar and Keren,²⁹ also commissioned by the Casinos Council, appeared to be essential. This report ended with the—for the legal casino industry—perturbing conclusion that the furnishing of proof would be very hard, so long as the judge did not condemn Golden Ten as such.

Besides the element of chance there is another argument for the prosecution of Golden Ten. The adversaries also have called upon the danger of addiction, and claim that this is greater in these casinos than it is in the state casinos. Schalken, for instance, feels that the tackling of the "most negative effects of (excessive) gaming" should be the government's first aim. Then, from this "priorities can be established to trace and prosecute illegal casinos."³⁰

The rise of Golden Ten in the mid-eighties served as a threat to the Dutch casino corporation as it was just then that this corporation was planning to expand on the number of casinos and preparing the introduction of slot machines. In addition, the returns of the state casinos fell back 14 percent over the course of 1985. Consequently, the corporation designed "policy strategies, after deliberation with the government (. . .) to withstand the competition of

the illegal gambling houses." This is what, in 1986, the board communicated to the staff in an elaborate circular.³¹ The proposals were aimed at the "popularization" of casino visits and implicated a change of image for the state casinos in the fashion of the Golden Ten casinos. The board meant to liberalize the identification requirements and dress code, review the opening hours of the slot machines department, abolish advertising limitations, tailor the gaming offer to the "small-time player," and enforce a "liberation" of the casino corporation to be able to pursue decisive policies.

However, the swerve in market strategy of the state casinos cannot be exclusively ascribed to the competition with Golden Ten. More likely it was a mutual process. The expansion and popularization of the state casinos and the rise of Golden Ten reinforced each other and came about from the same opportune circumstances. This way, Golden Ten may well be an image of the future of the legal casino trade.

While the Dutch casino corporation set out a new course on the market, the NSGT ogled the law.³² All throughout the palmy days of Golden Ten operators found themselves forced to turn away from the criminal elements on the market and to foil imputations of crime from the sidelines. This was already so when Blattgerste, in 1984, sued the newspaper *Algemeen Dagblad* for publishing an article in which one of the members of the board of the Dutch casino corporation declared that he heard that West-German criminals and Dutch drug smugglers joined together to exploit Golden Ten. Imputations like this were still a main concern

²⁷ See ELSEVIERS WEEKBLAD, September 28, 1985.

²⁸ T. M. SCHALKEN, CASINO EN ILLEGALITEIT. OVER DE MOGELIJKHEDEN TOT BESTRIJDING VAN HET ILLEGALE CASINOCIRCUIT [Casino and illegality: On the options of fighting illegal casinos] (Gouda Quint 1989).

²⁹ See WAGENAAR AND KEREN, *supra* note 10.

³⁰ See SCHALKEN, *supra* note 28.

³¹ See ZOETEMAN, *supra* note 7, at 199–203.

³² In response to the conviction of the game by the High Court on June 25, 1991 the NSGT officially applied for a permit with the Ministry of Justice (de Volkskrant, September 14, 1991). The request was denied, like several other requests for permits for example by Van der Valk, on grounds of the Dutch Gaming Act, because this law states that at all times only one permit can be granted. See CASINOS COUNCIL, ANNUAL REPORT 1993 19 (1994).

when the NSGT issued the memorandum, *Golden Ten In Perspective*,³³ in reaction to the government memorandum, *Gaming In Perspective*.³⁴ The NSGT estimated that the game returns of Golden Ten over 1988 added up to an amount between 310 and 440 million Dutch guilders (for the state casinos they were 225 million (SK)).³⁵ The NSGT mostly protested the way that Golden Ten is associated with criminality. The government point-blank ranked Golden Ten as an illegal game. What the government raised as the most important objection against Golden Ten, the NSGT found "incorrect and simplistic," namely that the operators:

(. . .) do not keep to their legal obligations with regard to social security and taxes as well as tread the regulations for a reliable and responsible game offer, while at the same time there are no provisions to keep any control over the negative effects of gaming.³⁶

The NSGT claimed that the government wrongly generalized all Golden Ten casinos.

CONCLUSION

In this article I have used the case of Golden Ten in the eighties to illustrate the transitional phase, characteristic for the alibi model of the 1964 Gaming Act, between on the one hand the prohibition of casinos and on the other hand the spread of casinos. The expansion of the Golden Ten market was answered by actions against the Golden Ten casinos and a growing number of state casinos. Illegal casinos were replaced by legal ones, or so it seems. My point here is that this assertion is only true in retrospect and is more or less performed (as in a play). It may just as well be posed that the choice for state casinos made Golden Ten casinos illegal. Finally I would like to examine how the notion of a "liminal" transitional phase can lead to a positive definition of the shady and controversial status of Golden Ten, without ranking the game outside the social order by labeling it illegal and criminal in advance.

First, the difference between legality and illegality is no unambiguous and distinct di-

chotomy, but a continuum with options for various extreme positions and changing possibilities. With Golden Ten I have not so much focused on the legal and illegal activities but all the more on the strategies of the operators who not only strived to broach a lucrative market but also thought they could obtain a legal status for the game. In the context of the 1964 Gaming Act they were not unreasonable notions. In this regime games of chance could obtain a legal status if their social importance could be demonstrated, and this importance could go as far as existing only in the evident market of players. In fact, between the fifties and nineties, the legislature mainly legalized gaming to meet the illegal markets. However, this did not happen without a concrete occasion and clear conditions. The fact that the government in 1974 legalized the casinos on a modest scale and under very restrictive conditions implicated an artificial scarcity of casinos. This scarcity made the market lucrative for entrepreneurs without a license and at the same time vulnerable to criminality as government control over illegal casinos is by definition difficult.

Second, in this light the legalization of a number of casinos during the seventies did not so much mark the end of illegality but the beginning of a transitional phase where the illegal parallel markets existed next to the state casinos. This resulted in a transitional market situation requiring a specific concept for description and analysis. Because of its great variety and controversial character the casino market became much like a circuit, like the one I described ear-

³³ NATIONALE STICHTING GOLDEN TEN (NSGT)[National Foundation Golden Ten], *GOLDEN TEN IN PERSPECTIEF. BELEIDSNOTA VAN DE NATIONALE STICHTING GOLDEN TEN TOT REGLEMENTERING EN LEGALISERING VAN GOLDEN TEN-SPELEN IN NEDERLAND. Z.P.* [Golden Ten in perspective. Policy plan of the National Foundation to regulate and legalize Golden Ten games in the Netherlands] (1989).

³⁴ NEDERLANDSE REGERING [Dutch government], *REGERINGS-STANDPUNT KANSSPELEN IN PERSPECTIEF. HANDELINGEN DER STATEN-GENERAAL* [Government position gaming in perspective] 21.277(2) (1988–1989).

³⁵ Using the outcome of a questionnaire issued under the Dutch municipalities by the department of weights and measures the Casinos Council estimated the Golden Ten game returns to be between 300 and 400 million guilders. See CASINOS COUNCIL, *supra* note 22.

³⁶ See NEDERLANDSE REGERING, *supra* note 34.

lier with regard to bingo.³⁷ Such a circuit distinguishes itself from an informal subculture as well as from a regulated economic sector. Social (livingroom) casinos as well as criminal underground casinos, condoned casinos, and respectable legal casinos are all part of the casino circuit. A differentiated circuit arises when different parties become involved with the exploitation of the game. Different parties can be game operators, catering parties, police, justice, various types of players, policy makers, and legislators. They influence the exploitation causing the practice of the game to gradually change.

According to the “actor-network theory,” developed by Latour,³⁸ among others, to enhance the study of science and technology, the diffusion of a game always goes together with the “translation” of the game into the terms of the parties that get involved. From this perspective a light can be shed on how a game variant gets entangled with the broader social order; the variant can only exist if and for the time that the game is supported by their harboring networks.

Third, important for Golden Ten is that the policy made a distinction between variants of illegal exploitation that were to be tolerated and other variants that should be tackled. In a way this distinction presented game exploitation with a new norm, because now not every illegal operator was treated as a criminal. The distinction between criminality and illegality, made not only by police and justice but also by the operators, furthered the purging of the game exploitation. Deceit and violence were pushed back, social acceptance of a game was reason for considerable leniency, and at the same time some (implicit) government control was implemented. The exploitation of Golden Ten in this light was considered to be a so-called ‘victimless crime’.³⁹ The gaming practice herewith approached the ratio of the law. The victimless crime viewpoint can lead to a permissive state or even legalization of the game.

Fourthly, with the “juridification” of Golden Ten the discussion turned more to the issue of skill. An essential part of this was, as became clear earlier, science. Operators, the public prosecutor, police, and judges engage expert witnesses, quote from their reports and avail of scientific arguments and methods to either prove or deny the skill level of the game. The under-

lying thought seems to be that scientific methods and theories can enhance juridical arguments and thus contribute to a “better,” that is, more independent and objective administration of law. But is that how it works? In 1983 a judge acquitted a Golden Ten operator on the basis of a scientific report presented by the defense. The prosecution was not able to counter this with any other scientific data. In this case justice was made dependent of science. Some six years later the judge convicted the game of Golden Ten on account of another report. Between 1983 and 1989 the judiciary adjusted her standards, partly pressured to it by politics and the state casino business. It seems that not so much were the reports decisive in this matter but they altered interpretation of the law. During this period police and justice practiced a little science of their own in the averment against Golden Ten. The judge accepted the observation reports by the police. Here, science was made dependent of justice.

It seems to be a paradoxical process. While science is called upon to enhance juridical arguments, the judiciary is undermining its credibility. This indicates the precarious position of science in court, as Sheila Jasanoff elaborately demonstrates in *Science at the Bar*.⁴⁰ Scientific methods and theories depend on the situation and often have only limited validity. If there are no experts or sufficient scientific analyses the judge may reject the charges (no matter how obvious the case may be). This lesson the public prosecutor learned in the early eighties during the actions against Golden Ten. After this, police and justice would venture out themselves to produce scientific evidence (even though the data could hardly pass as scientific). In the case around Golden Ten my conclusion is not that the judiciary has incorrectly or randomly made use of science but that an interplay existed between the rituals of justice and science that was part of and contributed to the ambivalent, liminal status of Golden Ten.

³⁷ See SYTZE KINGMA, *HET BINGOCIRCUIT: KAPITALISME EN VRIJETIJD*. WAGENINGEN UNIVERSITY [The Bingo Circuit: Leisure and Capitalism] (1988).

³⁸ See LATOUR, *supra* note 11.

³⁹ E. SCHUR, *CRIMES WITHOUT VICTIMS: DEVIANT BEHAVIOR AND PUBLIC POLICY* (Prentice-Hall 1965).

⁴⁰ SHEILA JASANOFF, *SCIENCE AT THE BAR: LAW, SCIENCE, AND TECHNOLOGY IN AMERICA* (Harvard University Press 1995).

SYTZE F. KINGMA

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